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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,039	08/01/2001	Paul J. Rankin	GB 000136	5473
24737	7590	11/16/2005	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS			DEANE JR, WILLIAM J	
P.O. BOX 3001				
BRIARCLIFF MANOR, NY 10510			ART UNIT	PAPER NUMBER
2642				
DATE MAILED: 11/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/920,039	RANKIN, PAUL J.	
	Examiner	Art Unit	
	William J. Deane	2642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 January 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 and 12-22 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 & 12-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 10 and 12 – 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the amended portion of the independent claims is ambiguous. It is unclear if the physical data carrier or a pouch containing the physical data carrier is carried on the clothes of a user.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 6, 10, 12, 14 and 16 - 22 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,404,580 (Simpson et al.) in view of EP 0 850 188 (Kraft).

Simpson et al. teach an apparatus for implementing at least one operational setting of an interactive electronic device having a reading means, a processing means and a control means as claimed by applicant, the information including at least one device setting, carrier identity information, a storage means, selecting of settings and

writing means (See Col. 3, line 56 – Col. 4, line 61, Col. 5, lines 6 – 50, Col. 6, line 48 – Col. 7, line 2, Col. 7, lines 20 – 29 and Col. 7, lines 47 – 65).

Claims 1 – 4 are further rejected along with claim 10 in view of EP 0 865 166 (Kraft). See page 2, lines 45 – 48, page 3, lines 6 – 7, page 4, lines 1 – 58 and page 5, lines 58 – page 6, lines 1 – 4. With respect to the pouch aspect note that the car kit in Kraft is a pouch. It would have been obvious to one of ordinary skill in the art to incorporate the physical data carrier into such a “pouch” as taught by Kraft into the Simpson device in order to have another means of storing or carrying the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson et al. Simpson et al. teach a controlling means for various settings of an electronic device and therefore, it would have been obvious to one of ordinary skill in the art to use such a means in any electronic device that was deemed appropriate.

Claims 7 – 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson et al. in view of the instant application.

Simpson et al. teach the claimed device as shown above except for the particulars of the tag. However, the instant application teaches that the particulars of the tags are old in the art (See pages 12 – 13 of the instant application). It would have

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been obvious to one of ordinary skill in the art to have incorporated such old tags, as described in the instant application, into the Simpson device as such would only entail the substitution of one physical carrier data means for another.

Response to Arguments

Applicant's arguments filed 01/24/2005 have been fully considered but are not deemed persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bill Deane whose telephone number is (571) 272-7484. In addition, facsimile transmissions should be directed to Bill Deane at facsimile number (571) 273-8300.

13Nov2005



WILLIAM J. DEANE, JR.
PRIMARY EXAMINER